IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.

NO. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]

Criminal Appeal No. 1442/2001
(Old No. 313/1996)

Devi Dutt and others — Appellant.

Vs.

State — Respondent.

AND

Criminal Appeal No. 1443/2001

Daulat Singh — Appellant.

Vs.

State — Respondent.

Decided on 07-12-2005

A.F.R. (~~Approved for Reporting~~)
~~Not Approved for Reporting~~

(Irshad Hussain, J.)

(B.S.Verma, J.)

Dated: 07-12-2005

In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 1442/2001

1- Devi Dutt S/o Radha Ballabh,
R/o Pratit Nagar, P.S. Raiwala,
District Dehradun.

2- Abdul Rahman S/o Abdul Gani
R/o Mohalla Jhariyan, Town Jwalapur,
P.S. Jwalapur, District Dehradun.

3- Sripal S/o Balbir Singh
R/o Bankhadi, P.S. Rishikesh
District Dehradun ……. Appellants.

Versus

State …… Respondent.

AND

Criminal Appeal No. 1443/2001

Daulat Singh S/o Sri Nanda Singh
R/o Pratit Nagar, Raiwala
P.S. Raiwala, District Dehradun ... Appellants.

Vs.

State …. Respondent.

Sri Lokendra Dobhal, learned counsel for the appellants.
Sri K.S. Rautela, learned A.G.A.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma ,J.

Dated: 07-12-2005

P.C.

All these accused have preferred appeals from their conviction and sentence to imprisonment for life under Section 302/34 I.P.C. and R.I. for three years under Section 201 I.P.C. per judgment and order dated 8-1-1996 passed by the then I Additional Sessions Judge, Haridwar in sessions trial No. 367/1991. The sentences were directed to run concurrently.

2- Briefly stated that facts of the case are that on 22-9-1990 constables Bhopal Singh and Saheb Singh of P.S. Ranipur, District Haridwar were on petrol duty. While they were returning to the police station in the early hours of that morning they found a decomposed dead body of unknown person lying in the jungle of village Tibadi, within the circle of said police station. The

information was carried to the police station and entry in G.D. report No. 7 of 6.30 A.M. (Ext. Ka.4) was then made S.I. Ramveer Singh Solanki went to that place with relevant papers to hold inquest on the dead body. Inquest report (Ext. Ka.7) was prepared in the presence of the panch witnesses and relevant documents, viz. challan report and diagram of the dead body were also drawn. The packed and sealed dead body was dispatched for post mortem examination, which was performed by Dr. B.L. Verma and post mortem examination report, Ext. Ka.6 was prepared on 22-9-1990 itself. At the time of the inquest bush shirt said to be on the dead body was taken out and attached by the Sub Inspector Ramveer Singh Solanki and memo, Ext. Ka.11 was then prepared. Bush shirt had the label of tailor 'Ashok Tailor Raiwala, Dehradun' and according to the prosecution it was attached to fix the identity of the dead body. At the time of the post mortem examination the medical officer removed the blood stained under-vest and a pair of trousers from the dead body and these were separately sealed at that time and sent to the police station. On receipt of the copy of the post mortem examination report a case under Sections 302/201 I.P.C. was registered at P.S. Ranipur, District Haridwar vide G.D. Report No. 15 of 10.05 (Ext.Ka.5) and investigation of the case was taken by Station Officer Sri V.K. Sharma. It was also the case of the prosecution that on 13-10-1990 the investigation officer was able to put the bush shirt and other clothes in front of Gyan Singh the father of the deceased and other family members all of whom identified these items belonging to Harpal Singh S/o Gyan Singh R/o Village Pratit Nagar, P.S. Raiwala. It was affirmed that the bush shirt was got stitched by said Harpal Singh from his tailor Rohtash Kumar. After getting the bush shirt identified, the memo, Ext. Ka.1 was prepared by the investigating officer.

3- It was also the case of the prosecution that on 13-10-1990 witness Indra Singh came to the investigating officer and disclosed that on 18-9-1990 at about 8-30 P.M. he had seen these accused assaulting Harpal Singh near a peepal tree in the vicinity of village Pratit Nagar of P.S. Raiwala, District Haridwar. At that time this witness was going to the house of his brother-in-law Jeetu resident

of village Pratit Nagar, P.S. Raiwala. The witness wanted to intervene and rescue Harpal Singh from being assaulted by these accused but was stopped and was even given a threat of dire consequences if he dated to disclose all about it to others. The witness kept mum and did not disclose anything about the incident till that date, that is, 13-10-1990 and even after given the information to the investigating officer gave in writing to the investigating officer what was seen by him on that day. The written information, Ext. Ka.3 was allegedly scribed at his instance by witness Chakradhar Kukreti.

4- It was also the case of the prosecution that during investigating witness Chakradhar Kukreti of village Pratit Nagar, P.S. Raiwala, District Dehradun disclosed to the investigating officer orally and also by submitting an application (Ext. Ka.2) to the effect that on 14-10-1990 all these accuse came to him house in the presence of Khag Prasad of his village and then made extra judicial confession of their guilt claiming that they have murdered Harpal Singh at 8.30 P.M. on 18-9-1990 in village Pratit Nagar and thereafter the dead body was taken to the jungle Tibadi within the circle of P.S. Ranipur, District Haridwar where the dead body was dumped to screen themselves from being brought to book and to be punished for the crime.

5- According to the prosecution another witness of extra-judicial confession named as Khag Prasad also gave a written application on the same day, that is, 15-10-1990. The Investigating officer also examined the tailor who stitched the bush shirt of the deceased. I.O. was told by Gyan Singh, the father of the deceased, that accused Daulat Singh was entertaining enmity and grudge on account of dispute pertaining to landed property of Smt. Budho Devi, who was the step mother of said Gyan Singh. Smt. Budho Devi was previously married to the father of accused Daulat Singh and after the death of her first husband she was remarried with the father of Gyan Singh. During investigation it also transpired from the statement of Gyan Singh that Smt. Indra Devi of village Pratit Nagar also claimed to have seen the incident in which all these accused assaulted Harpal Singh near peepal tree in village Pratit Nagar and

in view there her statement was also recorded by the investigating officer. Apart from the above evidence it was also the case of the prosecution that accused Daulat Singh himself lodged a report of non cognizable offence at P.S. Raiwala at 9.35 P.M. on 18-9-1990 alleging that Harpar Singh abused him and assaulted him in village Pratit Nagar and wanted the action to be taken by the police against the said culprit Harpal Singh.

6- Based on the evidence of above eye witnesses and circumstantial evidence the charge sheet (Ext. Ka.15) was submitted against all these accused on 31-12-1990 by the investigating officer. On cognizance being taken these accused were sent up for trial before the Sessions Court where the charges were famed against them on 4-12-1991 under Sections 302/34 I.P.C. and 201/34 I.P.C.

7- At the trial, prosecution to bring home guilt to the accused, relied upon the evidence of 13 witnesses. P.W.1, Gyan Singh is the father of Harpal Singh deceased. He gave out that accused Daulat Singh has had dispute with him in regard to the partition of the landed property which was finally divided between him and accused Daulat Singh and further that the accused raised dispute about seven Bighas land recorded in the name of their mother Smt. Bodho Devi. He also stated that the accused got this land recorded in his name after the death of Smt. Budho Devi. The witness went on to state that on 18-9-1990 at about 5 P.M. some altercation took place between his son Harpal Singh and accused Daulat Singh and later on at about 8 P.M. his son Harpal Singh left the house to attend his duty at Dudhadhari Ashram and thereafter did not return home alive. He also stated that Smt. Indra of his village told him that she had seen accused Daulat Singh, Sripal, Abdul Rahman and Devi Dutt assaulting Harpal Singh and this information was given to him by Smt. Indra at about 9 P.M. on that day itself. The witness claimed to have gone to police station to lodge the report of the incident but according to him the police did not register the report. He also identified the bush shirt-Ext. 1, pant –Ext. 2, under vest- Ext.3 and under wear – Ext. 4 said to be belonging to his son Harpal Singh deceased. The witness was confronted with his earlier statement

under Section 161 Cr.P.C. and he admitted that no statement in regard to the incident which took place near the peepal tree was made to the investigation officer.

8- P.W.2, Smt. Tara Devi the wife of the deceased also identified the bush shirt and other clothes of her husband. She also stated that Smt. Indra and Indra Singh have told her in the night that at about 8-30 P.M. they have sent these accused assaulting her husband near peepal tree. She gave out that when the police visited her house to fix the identify to the clothes attached from the dead body after 15-16 days of the occurrence. She also stated that on that day itself the accused had been arrested by the police. She further stated that after the information was given to her about assault made by the accused on her husband at about 8.30 P.M. on the day of the occurrence, she went to the police station next morning to have the report lodged, but the police did not cooperate in the matter. She denied to the suggestion that Harpal Singh had been kept concealed by her and another wife of Harpal Singh named as Raj Kumari at some unknown place and the accused have been falsely implicated in the case.

9- P.W.3, Smt. Vishno Devi wife of Gyan Singh was also examined to connect the clothes exhibits – 1 to 4 of the deceased. These clothes were shown to her on 13-10-1990 by the investigating officer. She also corroborated P.W.1 and P.W.2 that Smt. Indra of her village told all about the incident in which the accused assaulted her son Harpal Singh and that the information was given in the night of the incident itself and further that she and others went to the police station to report the matter but the police did not register the report.

10- P.W.5, Chakradhar Kukreti is the witness of extra-judicial confession as stated above. P.W.6, Indra Singh is the so called eye witness of the incident and he was examined to corroborate the case of the prosecution as stated above and to prove the written information, Ext. Ka.3 referred above. P.W.7, Rohtash Kumar is the tailor who was examined to connect the bush shirt, Ext. 1 with the deceased Harpal Singh by stating that this bush shirt was stitched by him while he was carrying his shop in the name and style “Ashok

Tailors in Raiwala". When he was examined he was not having his shop at Raiwala but was carrying a tailoring shop in the vicinity of Laltora bridge in the town of Haridwar in the name and style of 'New Mamta Tailor'. P.W.8, Head Constable Hari Singh made entry of G.D. No.7 of 6.30 A.M. on 22-9-1990 as referred in the earlier part of the judgment that constable Bhopal Singh and Saheb Singh of P.S. Ranipur, District Haridwar while on petrol duty found a decomposed dead body of unknown person lying in the jungle of village Tibadi, within the circle of police station Ranipur, District Haridwar.

11- P.W.9, Dr. B.L. Verma was posted as medical officer at District Hospital, Haridwar on 22-9-1990 and the post mortem of unknown decomposed dead body was performed by him at 3P.M. He made following observations in the post mortem examination report, Ext. Ka.6:-

- Dead body was a made aged about 35 years.
- By physical appearance the man was of average built.
- Body was decomposed and unbearable foul smell was there on it. Maggots were present all over the body. Abdomen and chest were dark brown in colour. Abdomen was distended. Skin had peeled of at many places. Most of the nails were absent and some were loose. Hair on skull were also loose. Mark of identification could not be detected due to decomposition. Right eye was open and swollen and left eye was absent.

  Following ante-mortem injuries were detected:-

1- Contusion 13 cm x 7cm in front and both side of neck.
2- Contusion 7cm x c cm on back of neck.
3- Contusion 16cm x 14cm in front and upper part of chest.
4- Contusion 12cm x 10 cm on left side of head and face.
5- Contusion 12cm x 10cm on left shoulder and arm.

On internal examination brain membranes were found congested. Brain was greyish coloured and liquefied. There was fracture of 3rd rib of left side. Bronchia were congested and rings of trachea were fractured. Lungs were congested and

on cutting dark bloody serum was coming out. Both the chambers of heart were empty and so was the case with the stomach. There was digested food and gas in the large intestine and whereas gas and faecal material in the small intestine.

In the opinion of the medical officer death was caused due to asphyxia as a result of strangulation about ten days ago. In cross examination the medical officer was not in a position to affirm as to whether the death had occurred eight days or ten days before the post mortem examination but claimed that the foul smell appeared to be on account of the body being four to ten days old. He reiterated from the post mortem examination that the death of the deceased had probably occurred about ten days ago.

12- P.W.10, Constable Rajendra Shah produced on record the five leaves of G.D. of 18-9-1990 of P.S. Raiwala as it was summoned to prove the some N.C.R. was got lodged by one Daulat Singh on 18-9-1990 at 9-30 P.M. as stated above.

13- P.W.11, S.I. Ramveer Singh has held inquest on the unknown decomposed dead body on 22-9-1990 and prepared the inquest report and other documents as stated above.

14- P.W.12, Inspector V.K. Sharma, has investigated the case. He proved the steps taken by him in connection with the investigation of the crime as briefly referred above. He placed charge sheet against the accused on completion of the investigation. He denied to the suggestion that accused were arrested on 13-10-1990, the day when the statements of the witnesses were recorded and clothes attached from the dead body were shown to the witnesses.

15- P.W.13, Devendra Singh was examined to prove the N.C.R. No. 56 under Sections 323/504 I.P.C. and relevant G.D. Report No.27 of 18-9-1990 of P.S. Raiwala and the same was got exhibited as Ext. Ka.16 on the basis of the same having been prepared by the witness. He claimed that the N.C.R. was got lodged by the accused Daulat Singh who was present in the court . In cross-examination this witness stated that he was able to remember this accused Daulat Singh by face for all these five years although admitted that the

signatures of Daulat Singh are not before him and which could be available on the N.C.R.

16- This all is the evidence of the prosecution.

17- The accused did not admit the accusations of the prosecution and claimed that they have been falsely implicated in the case by the police. No evidence was adduced in defence.

18- As is evident from the evidence of the prosecution the case against the accused was based not only on the eye witness account of the two witnesses but also on the basis of the incriminating circumstances allegedly connecting these accused with the commission of murder of the deceased. The learned Sessions Judge made an appreciation of the evidence of the prosecution and opined that the incriminating circumstances pressed in to service by the prosecution stand proved by cogent and reliable evidence and these form a complete chain leading to the only inference that these accused and none other committed the murder of the deceased Harpal Singh at about 8-30 P.M. on 18-9-1990. The incriminating circumstances enumerated by the learned Sessions Judge were as under:-

1- On 18-9-1990 at about 5 P.M. an altercation took place between the accused Daulat Singh and Harpal Singh deceased on the issue of dispute pertaining to the landed property and this prove the motive to commit the crime.

2- The same day, that is on 18-9-1990 Harpal Singh deceased left his house to attend his duty at Dudhadhari Ashram and thereafter did not return alive.

3- On the same day witness Indra Singh had seen these accused assaulting Harpal Singh near the peepal tree as shown in the site-plan, Ext. Ka.12 and the witness having tried to rescue the victim was given threat of dire consequences and was made to run away from there to save himself from being killed by these accused.

4- The N.C.R. No. 56 and G.D. Report, Ext. Ka.16 establish that it was lodged by accused Daulat Singh himself and it prove an admission of the accused connecting him to the crime in question.

5- The clothes attached from the dead body were correctly identified by P.W.1, P.W.2 and P.W.3, the father, wife and mother respectively of Harpal Singh deceased thereby exhibiting that the dead body belonged to the said deceased.

6- The accused were arrested on 18-10-1990 and were then interrogated as per endorsement in Ext, Ka.14 and on their pointing the place of the occurrence was shown in site-plan, Ext. Ka.12 and thereafter they further pointed out the place where the dead body was dumped by them as per endorsement in Ext. Ka.13 and site plan, Ext. Ka.10 thereby making out a relevant fact as admissible under Section 8 of the Indian Evidence Act.

7- All these accused made ext-judicial confession of their guilt before the witness P.W.5, Chakradhar Kukreti as was also endorsed by the witness in his application, Ext. Ka.2.

8- According to the medical officer P.W.9, Dr. B.L. Verma the death of the deceased was probably caused at about 8.30 P.M. on 18-9-1990, the time of the incident as recorded in the N.C.R. No. 56 and G.D. Ext. Ka.16 prepared on the basis of the N.C.R. of accused Daulat Singh himself and that the incident witnessed by witness Indra Singh.

19- Learned counsel for the appellants referring to the circumstances highlighted by the learned Additional Sessions Judge persuasively argued that the learned Sessions Judge failed to take in to account the important aspect of the case that all the relevant witnesses were got up witnesses who were also related to the accused and were made to state that the accused assaulted the victim at the time of the alleged occurrence and after committing the murder dumped the dead body at a far away place in the forest of Tibadi, within the circle of P.S. Ranipur, District Haridwar and that in the totality of the circumstances of the case the evidence of the witnesses being shaky and discrepant could not have been taken to either prove the incident of the assault or any of the incriminating circumstance against these accused or any of them. Learned counsel took us to the evidence of all these witnesses to bring home his point of view and further urged that the decomposed dead body having been found to be about ten days old there was absolutely no

probability that the assault was made in the evening of 18-9-1990 as projected in the case by the prosecution on the basis of the evidence of the got up witnesses and circumstances. Contrary to this learned A.G.A. supported the judgment of the learned Sessions Judge by submitted that the incriminating circumstances proved by definite and cogent evidence make out a complete chain which lead to irresistible conclusion that the accused committed the murder of the deceased on 18-9-1990 and that the opinion evidence of the medical officer could not be taken to belie and assail the testimony of the prosecution witnesses that the occurrence probably took place in the evening of 18-9-1990 in which the deceased was fatally assaulted and later on his dead body was dumped in a forest in the vicinity of P.S. Ranipur, District Haridwar. In his opinion the accused have been rightly held guilty and convicted by the learned Additional Sessions Judge, Haridwar.

20- Having given out anxious consideration to these rival contentions we have reached to the conclusion that the prosecution has not been able to make out any case against the accused (appellants) and there is no evidence and circumstance to establish that on the fateful day, that is, 18-9-1990, these accused or any of them fatally assaulted the deceased near peepal tree in the vicinity of P.S. Raiwala, District Dehradun and thereafter dumped the dead body in the jungle to Tibadi within the circle of P.S. Ranipur, District Haridwar where the decomposed dead body was found lying on 22-9-1990. We proceed to give our reasons for coming to the said conclusion.

21- In regard to the first circumstance referred above it need to be stated that there was interested statement of Gyan Singh (P.W.1) that at about 5 P.M. on 18-9-1990 accused Daulat Singh has had an altercation with his son Harpal Singh deceased on the issue of the landed property left behind by Smt. Budho Devi the mother of the witness and the said accused. The interested statement of the witness do not stand corroborated from any reliable evidence such as any report to the police about the incident. it does not stand to reason as to why no report was lodged if such occurrence had taken place. Moreover the incident was taken to prove that there was motive for

the accused to commit the crime. The prosecution evidence also failed to sustain the claim because the evidence of Gyan Singh himself indicate that partition of agricultural land had already taken place between him and accused Daulat Singh as a result of which both of them got about 11 ½ Bighas of agricultural land. So far as the landed property in the name of Smt. Budho Devi was concerned, the dispute about it stand resolved by the reason of the fact that this property came to be recorded in the name of accused Daulat Singh as admitted thereto by the witness. Therefore, there was no cause for any quarrel taking place on that account at 5 P.M. on 18-9-1990 and in the absence of any independent evidence to corroborate the allegation it was not justified on the part of the learned Additional Sessions Judge to have accepted the claim of this witness about the said incident. It was also of significance that Gyan Singh did not name any witness who was present at the time of altercation having allegedly taken place at 5 P.M. on 18-9-1990 and it thus clearly appear that this version was fabricated to support the prosecution case against the accused Daulat Singh and his other alleged companion accused. Having considered the evidence on record we are convinced that this circumstance was not established by any cogent evidence and there was therefore no direct motive for the commission of the murder of the deceased.

22- The next circumstance pertain to the alleged fact that Harpal Singh left his house at about 8.00P.M. to attend his duty at Dudhadhari Ashram and thereafter did not return to his house. This circumstance need to be considered together with the circumstance mentioned at serial No.3 in view of the allegation that the deceased was assaulted by these accused while he was on his way to attend his duty at Dudhadhari Ashram. According to the prosecution the deceased was seen, being assaulted with Lathis and fists by the accused near peepal tree in the vicinity of village Pratit Nagar of P.S. Raiwala, at about 8-30 P.M. on 18-9-1990 by witness Indra Singh (P.W.6). As stated above strangely enough this witness despite related to Harpal Singh deceased claimed to have kept mum and did not tell above the incident to anybody till 13-10-1990, the day when he gave the statement to the investigating officer and also submitted

written application, Ext. Ka.3. The written application, Ext. Ka.3 bear the date 13.10.1990 which has interpolation and its scribe Chakradhar Kukreti (P.W.5) categorically admitted that this application was dated 15-10-1990 which had been altered to 13-10-1990 and at the same time claiming that he is not aware as to who had done the interpolation. The statement of the scribe is sufficient to assail the claim of Indra Singh that he went to police to tell all about the incident on 13-10-1990 and gave that application wherein he acknowledged that he had in fact seen the incident in which the deceased was assaulted by accused at about 8-30 P.M. on 18-9-1990. We find no difficulty in accepting the submission that not only the witness was got up to say like this but the said document was also fabricated with a view to corroborate the false evidence of the witness.

23- The falsity of the claim of the witness Indra Singh also stand exhibited from the evidence of Smt. Tara Devi (P.W.2) the widow of the deceased who claimed that in the night of the said occurrence itself she was told about it by witness Indra Singh and one Smt. Indra of her village but the police did not register the report against the accused. In fact nothing was known as to what had happened with the deceased and this was the reason that the got up witness Indra Singh was made to state that after witnessing the incident he kept quiet and did not disclose anything about it till 13-10-1990 although the attempt of the prosecution failed when Smt. Tara Devi (P.W.2) came out with the above version to totally belie the evidence of Indra Singh. It may be stated here that Smt. Indra was not examined in evidence although she was shown to be another eye witness of the assault by the accused. Smt. Indra was interrogated by the investigating officer as was affirmed by perusal of the case diary of the case but she later on filed an affidavit before the learned Additional Sessions Judge denying her presence at the time of any such incident and thereby discrediting the claim of the prosecution. This was the reason that she was not examined in evidence by the prosecution. At any rate if Smt. Indra Devi and Indra Singh had told all about the incident to the wife of the deceased and even to Gyan Singh (P.W.1) the father of the deceased there was no reason that the

police would not have recorded the F.I.R. if they had really got this information and went to the police station to report the matter. The claim of both P.W.1 and P.W.2 that the police did not lodge their report about the incident can not safely be believed and in the totality of the circumstances of the case we have no hesitation in saying that false evidence was given by these witnesses in that regard also with an attempt to show that the deceased Harpal Singh left the house at about 8 P.M. on 18-9-1990 and soon after at 8.30 P.M. was cornered and assaulted by these accused near peepal tree in the village. Having considered the evidence on record we are convinced that both these circumstances were also not established beyond doubt and the learned Additional Sessions Judge again took an incorrect view that the evidence of the prosecution sufficiently established both these circumstances as links in the chain of the incriminating circumstances leading to the guilt of the accused.

24- We now take up next circumstance at serial No.4 which pertain to N.C.R. said to have been lodged by accused Daulat Singh at P.S. Raiwala on 18-9-1990 against Harpal Singh deceased about an incident which took place at about 8-30 P.M. on that day. Head Constable Devendra Singh (P.W. 13) was examined to prove the G.D. No. 27 of 21-35 dated 18-9-1990 of P.S. Raiwala in regard to the N.C.R. No. 56 lodged by Daulat Singh S/o Sri Nanda Singh R/o Pratit Nagar in regard to some incident of assault on him by Harpal Singh S/o Gyan Singh R/o Village Pratit Nagar. The N.C.R. was recorded under Sections 323/504 I.P.C. and according to the witness the G.D. report was prepared by him and it was exhibited as Ext. Ka.16 on the basis of the signatures of the Head Constable against report in the general diary. At the time of recording of the evidence N.C.R. was not before this witness but he claimed that N.C.R. bear the signatures of accused Daulat Singh identified by him in the dock. The witness gave out that he was able to fully remember the face of the accused Daulat Singh as the person who lodged the N.C.R. about five years ago. It is of significance that nothing was put to the accused Daulat Singh in regard to this incriminating circumstance based on the alleged claim of the prosecution that the N.C.R. was lodged by him about the incident of 8.30 P.M. of 18-9-1990

involving the deceased. As argued by the learned counsel for the appellants the accused having not been given opportunity to give an explanation about it the alleged incriminating circumstance could not have been taken against the accused. In view of absence of a question put to the accused under Section 313 Cr.P.C. we thing that the argument of the learned counsel for the appellants is sustainable. Further it can not safely be accepted that the Head Constable was able to remember the face of Daulat Singh who lodged the N.C.R. more than five years ago and in the totality of the circumstances of the case the learned Additional Sessions Judge was not justified in coming to the conclusion that the N.C.R. was lodged by the accused Daulat Singh against the deceased.

25- This aspect of the matter may also be considered by another angle. When an unknown dead body was found lying in the jungle due publicity was given so that the identity of the dead body could be fixed and since it was the case of the prosecution that Harpal Singh went missing since 18-9-1990 his family members could have come forward and the N.C.R. could have come in to light much earlier to facilitate the investigating officer to interrogate the accused Daulat Singh about it. The prosecution case is silent about it and that the accused according to the prosecution came to be arrested only after 13-10-1990 when Indra Singh (P.W.6) came out to give statement to the investigating officer and submit written application, Ext. Ka.3 referred in the earlier part of the judgment and which had been found to be a fabricated document. It was therefore shronded in mystery as to who in fact lodged the N.C.R. No. 56 on 18-9-1990 at P.S. Ranipur, and in the face of the evidence on record it was not safe to connect it with the accused Daulat Singh who has had no opportunity to tell anything about it either during interrogation or in his statement under Section 313 of the Code of Criminal Procedure. For this reason also the N.C.R. could not have been taken in any way to connect the accused Daulat Singh with the crime of the murder of the deceased.

26- The next circumstance pertain to the identification of the clothes attached from the dead body so as to fix its identity as that of the deceased Harpal Singh and this circumstance in no way can be

taken to connect the accused with the commission of the crime of murder.

27- The next circumstance at serial No. 6 relate to admissibility of relevant fact under Section 8 of the Indian Evidence Act on the basis of the alleged place of the occurrence of assault pointed out to the investigating officer by the accused after their arrest on 18-10-1990 and also in regard to their telling about the place where the dead body of the deceased was allegedly dumped by them after committing the murder of the deceased. The evidence in this regard as given by the investigating officer Inspector V.K. Sharma (P.W.12) can not at all be said to be convincing as also urged by the learned counsel for the appellants. The reason being that the claim of the prosecution that the accused were arrested on 18-10-1990 and were interrogated was false. The evidence of the prosecution itself indicate that the accused were taken into custody much earlier probably on 13-10-1990, the date when the clothes attached from the dead body, were taken to the village to be identified by the father and other family members of the deceased and this was the reason that Smt. Tara Devi(PW2) categorically stated that the accused were arrested by the police on the day when her statement was recorded by the police after the identification of the clothes. The clothes were identified on 13-10-1990 vide memo, Ext. Ka. 1and that was the day when the statements of P.W.1, P.W.2, P.W.3 and others were recorded by the Investigating Officer. Another witness Chakradhar Kukreti (P.W.5) also categorically stated that the accused were arrested by the police on the day when the police came to the village with clothes of the deceased and these were shown to the family members. In the face of evidence of both these witnesses no dispute could have been raised about the fact that the accused were already under custody of the police on 13-10-1990 and the claim made by the prosecution that they were arrested on 18-10-1990 and were then interrogated was false. For this reason it will be difficult and rather unlawful to place reliance on the evidence of the Investigating Officer that these accused led him to the two places to show their involvement in the commission of the crime. The relevant fact borne out of the evidence of the prosecution could not have, therefore, been

taken into reckoning by invoking a provision of Section 8 of the Indian Evidence Act. In other words the incriminating circumstance said to have been established on that basis was not in fact there in existence and was not a link in a chain of the circumstances leading to prove the guilt of the accused.

28- The next circumstance relate to the alleged extra-judicial confession made by the accused before P.W.5 Chakradhar Kukreti who is also said to have submitted a written application, Ext. Ka. 2 in that regard. The statement of the witness is to the effect that the extra-judicial confession was made to him at his house by the accused in the presence of one Khag Prasad on 14-10-1990 and the written application in that regard was thus given by him to the police on next day 15-10-1990 and which was placed on record as Ext. Ka.2. As stated above it has in the evidence of this witness that the accused was already under arrest on 13-10-1990 therefore question of making of any extra-judicial confession by the accused before this witness does not arise and the evidence in that regard thus also appear to be fabricated and got up. There is no need to further dilate on this point except to state that the accused were not even put a question about the extra-judicial confession having been made by them to this witness. Learned Addl. Sessions Judge also ignored all these important factors and went on to take the statement of this witness as a gospel truth in regard to the extra-judicial confession of the accused about their guilt. In short the evidence of the prosecution is not at all reliable in their respect also.

29- The last circumstance relate to the medical evidence of the case which cannot be taken to also support the prosecution version about the date of death of the deceased. As referred above on the basis of the post mortem examination report performed on 22-9-1990 the highly decomposed dead body was found to have been strangulated to death about ten days ago. The external features also affirm the time duration as given by the medical officer that the death probably occurred about ten days ago. Considering this aspect of the matter it was difficult to infer that the death of the deceased had occurred in the evening of 18-9-1990 instead of much earlier as was evident from the post mortem examination report of the dead

body. In the face of this aspect of the matter the trial court was also not justified to come to the conclusion that the medical evidence conclusively establish that the death of the deceased took place at 8.30 P.M. on 18-9-1990 and the time of the occurrence also conform to the version of the N.C.R. No. 56 which was lodged against the deceased by accused Daulat Singh. In other words the medical evidence could have also not been taken to support the prosecution case about the time of the occurrence.

30- These are the reasons which forced us to reach to the above conclusion that the prosecution has not been able to make out any case against the accused and that the trial court was not at all justified to come to the conclusion that the incriminating circumstances highlighted by the prosecution make out a complete chain leading to the irresistible conclusion that none other than the accused were responsible for committing the murder of the deceased and thereafter throwing the dead body to screen themselves from being brought to book to receive punishment for the commission of the offence. The judgment of conviction and sentence as recorded by the trial court therefore cannot be legally sustained and is liable to be set-aside.

31- In view of above the appeals are allowed and the Judgment and order dated 8-1-1996 passed by the Additional Sessions Judge, Haridwar are set-aside and the accused-appellants Devi Dutt, Abdul Rahman, Sripal and Daulat Singh are acquitted of the charges under Sections 302/34 I.P.C. and 201 I.P.C. levelled against them.

32- The accused are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender.

33- Let the record be sent back to the trial court for compliance.

(B.S.Verma, J.) **(Irshad Husssain, J.)**

ISB